

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Orca Giarrusso

**Date application filed with the Town Clerk:** June 22, 2007

**Nature of request:** A Special Permit to build a 10 foot extension on the back of her home on a non-conforming lot, under Section 9.22 of the Zoning Bylaw

**Address:** 236 Middle Street (Map 23D, Parcel 6, R-O Zoning District)

**Legal notice:** Published on June 27 and July 4, 2007 in the Daily Hampshire Gazette and sent to abutters on June 28, 2007

**Board members:** Tom Simpson, Hilda Greenbaum and Jane Ashby

**Submissions:** The petitioner submitted the following documents with the application:

- A site plan showing the non-conforming side yard setback to the south side of the house, and the 10 foot extension of the house along that line;
- The floor plan of the existing house plus the proposed 10 foot extension;
- The south and east elevations showing the addition to the house;
- A structural section showing the roofline to the full basement;
- An Amherst GIS map of the property and abutting properties that show the non-conforming lots in terms of frontage, setbacks and lot size.

Town staff submitted the following memos:

- A memo from the Fire Department stating that the property has adequate access for emergency vehicles, dated 7/10/07;
- A memo from the zoning assistant outlining the dimensional requirements for the lot and the proposed extension of the non-conforming building, dated 7/13/07.

**Site Visit:** July 18, 2007

The Board met David Cody, builder for the applicant, at the site. The following was observed by the Board:

- Several contiguous narrow lots with 1950s houses on the easterly side of Middle Street;
- The upward slope of the land from the front to the back of the lot;
- Abundant vegetative screening along the southern lot line of the petitioner;
- The proposed 10 foot extension at the back of the house on the south side that was staked out by Mr. Cody;
- The side yard setback, into which the proposed extension protrudes by 4 feet, extending the non-conformity of the house by an area of 4' x 10';
- The proposed 10' x 18' addition to the porch, staked out by Mr. Cody, which is conforming to setback and coverage requirements and not part of the hearing.

**Public Hearing:** July 19, 2007

David Cody, builder, represented the petitioner at the hearing. He gave the following information:

- The petitioner is proposing a small addition to the house that will increase the size of the master bedroom and provide a bath for that bedroom;
- The second addition will be to the living room, which will be extended in order to provide a porch;
- The southern side of the house is 21 feet from the property line, four feet inside the 25 foot setback required by the Zoning Bylaw for an R-O zoning district;
- The addition to the living room is not part of the Special Permit request; only the 4' x 10' extension of the master bedroom that extends into the side yard setback is relevant to this application.

Ms. Greenbaum asked about the bed and breakfast operation of the applicant. She wondered if the proposal would be used by the bed and breakfast business. Mr. Cody said that the proposed addition is for the applicant's bedroom only. The front two bedrooms of the house are used for the bed and breakfast and will not be affected.

Ms. Greenbaum asked if there were any other accessory uses on the property. Mr. Cody said there are not. The house is a residence with one legal accessory use that does not require a Special Permit. Section 5.0100 of the Zoning Bylaw allows by right up to three bed and breakfast guests in any zoning district

Ms. Greenbaum asked if the addition could be constructed to fit the side yard setback requirement of 25 feet. Mr. Cody replied that if the addition were to be shifted inward by 4 feet, there would not be room for the bath plus bedroom furniture, which would defeat the purpose of the addition. Also, there would be roofline problems with too many angles. The applicant needs a cohesive wall space, Mr. Cody stated.

Ms. Greenbaum said that she is concerned about the precedent of extending the building into the setback. Mr. Simpson replied that the Board does not act on precedent, and that the Board has permitted extensions of non-conforming buildings in the past. The lots and houses in the neighborhood obviously were developed prior to the designation of the R-O zoning district along Middle Street and thus are legally grandfathered as non-conforming.

Mary Kohler, 278 South East Street, two houses south of the applicant's, did not comment on the proposal, but did confirm that the houses were built before the significant changes of the 1965 Zoning Bylaw and the zoning districts set for South Amherst in the 1970s.

Mr. Simpson made a motion to close the evidentiary portion of the hearing. Ms. Greenbaum seconded the motion, and the vote was unanimous to close the hearing.

**Public Meeting:**

The Board discussed the removal of the old apple tree in the back yard, and whether they should caution the petitioner that arsenic was most likely in the soil surrounding the tree. They decided against any condition regarding the tree and the possible contaminated soil.

The Board discussed the findings and conditions of the Special Permit if it would be granted.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because several of the abutting lots in the neighborhood are non-conforming as to size and frontage.

Also, several have had additions to these basically small 1950s houses.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the house extension is just 10 feet in the back and does not intrude any more into the setback than the house itself.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the conditions of the permit will ensure that the addition will be appropriate to the house and neighborhood.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the vegetative screening that already exists will not be changed. The driveway and parking will not change either.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because there will be no additional exterior lighting.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the proposed addition is small and not intrusive or out of character with the neighborhood.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes the convenience and welfare of the home owner and does not impose on the neighborhood sense of privacy or aesthetics.

#### **Public Meeting – Zoning Board Decision**

Mr. Simpson made a motion to APPROVE the proposal with conditions. Ms. Greenbaum seconded the motions.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to build a 10 foot extension on the back of house that is 4 feet within the side yard setback on a non-conforming lot, under Section 9.22 of the Zoning Bylaw, at 236 Middle Street (Map 23D, Parcel 6, R-O Zoning District), as requested in the application filed by Orca Giarrusso, with conditions.

\_\_\_\_\_  
TOM SIMPSON

\_\_\_\_\_  
HILDA GREENBAUM

\_\_\_\_\_  
JANE ASHBY

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2007 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2007.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2007  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to build a 10 foot extension on the back of house that is 4 feet within the side yard setback on a non-conforming lot, under Section 9.22 of the Zoning Bylaw, at 236 Middle Street (Map 23D, Parcel 6, R-O Zoning District), as requested in the application filed by Orca Giarrusso, subject to the following conditions:

1. The addition shall be built according to the plans submitted by the applicant and approved by the Board at the public meeting on July 19, 2007.
2. The exterior of the addition shall match that of the rest of the house.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE